

1 **Calvin House** (SBN 134902)
calvin.house@gphlawyers.com
2 GUTIERREZ, PRECIADO & HOUSE, LLP
3020 E. Colorado Boulevard
3 Pasadena, CA 91107
Tel: 626-449-2300 | Fax: 626-449-2330
4 Attorneys for Defendant Michael Medina
5
6
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 ALEX AGUILAR, JR., et al.,
12 Plaintiffs,

13 v.

14 CITY OF LOS ANGELES, et al.,
15 Defendant.
16

No. 2:17-cv-04382-CBM-MRW

**Defendant Medina's Opposition to
Plaintiffs' Motion in Limine No. 2**

Date: July 17, 2018

Time: 10:00 a.m.

17 **Introduction**

18 The Plaintiffs ask the Court to bar two of the Defendants experts from
19 testifying about the effects of drugs that their decedent had in his system. Defendant
20 Medina does not intend to have Mark Kroll testify at trial regarding his Opinion
21 No. 6, which is the subject of the Plaintiffs' challenge. The Court should deny the
22 motion with respect to the challenged opinion to be presented by Dr. Vilke.

23 **Argument**

24 Fed. R. Evid. 702 provides: "A witness who is qualified as an expert by
25 knowledge, skill, experience, training, or education may testify in the form of an
26 opinion or otherwise if: [¶] (a) the expert's scientific, technical, or other specialized
27 knowledge will help the trier of fact to understand the evidence or to determine a
28 fact in issue; [¶] (b) the testimony is based on sufficient facts or data; [¶] (c) the

1 testimony is the product of reliable principles and methods; and [¶] (d) the expert
2 has reliably applied the principles and methods to the facts of the case. Dr. Vilke's
3 opinion that the Plaintiffs' decedent had drugs that likely caused him to act in an
4 irrational and impulsive manner, contributing to his death satisfied all of those
5 requirements.

6 ***A. Dr. Vilke is qualified as an expert by knowledge, skill, experience, training***
7 ***and education.***

8 The Plaintiffs challenge Dr. Vilke's status on the grounds that he "is not a
9 toxicologist," and it is certainly true that Dr. Vilke testified that he was not a board-
10 certified toxicologist. Lack of board certification is not disqualifying. *Gaydar v.*
11 *Sociedad Instituto Gineco-Quirurgico y Planificacion Familiar*, 345 F.3d 15, 24
12 (1st Cir. 2003) ("The proffered expert physician need not be a specialist in a
13 particular medical discipline to render expert testimony relating to that discipline").
14 See also *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987). The question is
15 whether Dr. Vilke has the necessary expertise.

16 The copy of Dr. Vilke's report that Plaintiffs attached to their motion did not
17 include his curriculum vitae, which describes his credentials. It is attached to this
18 opposition as Exhibit 1. The c.v. shows without question that Dr. Vilke has the
19 credentials to testify about the effect of the drugs found in the decedent's system.
20 He was a reviewer for the Journal of Forensic Toxicology and Pharmacology in
21 2014 (Ex. 1, p. 8); a Co-Investigator with Edward Castillo for a study entitled,
22 "Point-of-Care Testing for Illicit Drugs and Alcohol Intoxication in an Emergency
23 Room, funded by the National Institute on Drug Abuse through Seacoast Science,
24 Inc., 2013-2015 (Ex. 1, p. 21); an author of "The Role of Subject Intoxication and
25 Other Characteristics in Law Enforcement Use-of-force Incidents" in the Journal
26 for Medical Legal Affairs in 2016 (Ex. 1, p. 48); an author of "Injuries Associated
27 with Law Enforcement Use-of-force Incidents with and without Subject
28 Intoxication. in the Academic Emergency Medicine in 2017 (Ex. 1, p. 74); a

1 speaker on “Agitated Delirium — Role of Illicit Drug Use in Sudden Restraint
2 Death” at the Western Medical Toxicology Fellowship Conference in 2009 (Ex. 1,
3 p. 83)

4 Further, in portions of his deposition that the Plaintiffs did not provide, Dr.
5 Vilke testified to his experience in dealing with thousands of meth-using patients
6 brought to an emergency room and to the jail. The pertinent pages from the
7 deposition are attached to this opposition as Exhibit 2.

8 Based on the credentials shown on his c.v. and the experience testified to at
9 his deposition, Dr. Vilke is qualified to testify regarding the effect of the drugs in
10 the decedent’s system on his behavior.

11 ***B. Dr. Vilke’s specialized knowledge will help the trier of fact to understand***
12 ***the evidence or to determine a fact in issue.***

13 Although the Plaintiffs take issue with Dr. Vilke’s conclusions, they have not
14 established the lack of specialized knowledge. The average juror has not observed
15 thousands of patients brought to an emergency room and to the jail under the
16 influence of drugs. The average juror is not in a position to interpret the toxicology
17 results that appear in the coroner’s report. Therefore, it is appropriate for Dr. Vilke
18 to testify to the effects of those drugs based on his expertise.

19 The *McDowell* case that the Plaintiffs cite does not support their position.
20 There, an inmate offered an expert to testify that a delay in treatment caused the
21 inmate’s injuries. Although the actual delay was four hours, the doctor’s only
22 scientific support for his opinion that the delay caused the injury was a study that
23 dealt with a delay of 48 hours. *McDowell v. Brown*, 392 F.3d 1283, 1300 (11th Cir.
24 2004). Therefore, his opinion that earlier treatment was better was not supported by
25 specialized knowledge. Here, by contrast, Dr. Vilke’s medical knowledge about the
26 effects of drugs, and his experience in dealing with patients with drugs in their
27 system is a proper basis for an expert opinion.
28

1 **C. *Dr. Vilke has reliably applied the principles and methods to the facts of the***
2 ***case.***

3 Although the Plaintiffs claim the challenged opinion is based only on
4 subjective belief, that is not the case. As a doctor who has dealt with thousands of
5 patients in the emergency room and in custody, Dr. Vilke has offered more than a
6 subjective opinion about the effect of the drugs on the decedent. He has applied his
7 medical expertise. The Plaintiffs' disputes with Dr. Vilke's reasoning and
8 conclusions are matters that can be brought up on cross-examination.

9 **D. *Dr. Vilke's opinion is relevant.***

10 Although the Plaintiffs claim that the cause of their decedent's behavior is
11 not relevant, the positions they have taken demonstrate that is not so. Since they
12 challenge Defendant Medina's statement that he thought the decedent was under the
13 influence, the Defendants are entitled to present evidence that his behavior was
14 consistent with having drugs in his system. Since they claim that the decedent was
15 placid until the Taser was deployed, the Defendants are entitled to present evidence
16 to support their position that he was uncooperative and belligerent, characteristics
17 that can be the product of having the drugs in his system. Since they claim that the
18 force used by the Defendants caused the decedent's death, the Defendants are
19 entitled to present evidence that the drugs contributed to his death.

20 **Conclusion**

21 There is no basis for barring Dr. Vilke from providing his opinion that the
22 drugs in the decedent's system contributed to his death. The Plaintiffs may make
23 their points about that testimony on cross-examination, and in argument to the jury.

24 September 18, 2018 GUTIERREZ, PRECIADO & HOUSE, LLP

25 By: /s/ Calvin House
26 Attorneys for Defendant Matthew Medina